

**Before the  
Federal Communications Commission  
Washington D.C. 20554**

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	

**OPPOSITION OF ALLTEL**

Kentucky ALLTEL, Inc. ("ALLTEL"), hereby opposes the Petition for Waiver ("Petition") filed by Southeast Telephone, Inc. ("SE TEL") in the above-captioned proceeding<sup>1</sup>. SE TEL seeks a waiver of the Commission's rules that terminate the competitive local exchange carriers' ("CLECs") "rural exemption" under the *CLEC Access Charge Order*<sup>2</sup> should they serve non-rural customers. ALLTEL opposes the Petition because SE TEL has not made a showing that its circumstances justify a waiver of the rule or that a waiver serves the public interest. Grant of the requested waiver would create the very administrative burden the Commission sought to avoid in its original ruling.

In the *CLEC Access Charge Order*, the Commission concluded that the "rural exemption" is available to CLECs competing against non-rural price-cap ILECs only if no portion of the CLEC's service area falls within "any incorporated place of 50,000 or more or within an urbanized area as defined by the Census Bureau."<sup>3</sup> Rural CLECs are permitted to charge access rates higher than the competing ILEC but not greater than the NECA companies. As stated in SE Tel's Petition, the primary reason for adopting the rural exemption was to avoid

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<sup>1</sup> See *Public Notice*, Pleading Cycle Established for Petition of Southeast Telephone Inc. for Waiver of CLEC Access Charge Rules, CC Docket No. 96-262, DA 04-936 (rel. April 2, 2004).

<sup>2</sup> *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, 16 FCC Rcd. 9923 (2001) ("CLEC Access Order" or "Order").

<sup>3</sup> Petition at 2.

a CLEC access charge scheme.<sup>4</sup> The Commission also made it clear that administrative simplicity was another key consideration in the way the rural exemption was defined, and refused to adopt a definition that determined eligibility on a customer by customer basis.<sup>5</sup> As a result, the Commission's definition encompasses the CLEC's entire service area and does not provide any exceptions. SE TEL's alleged special circumstances neither justify a grant of the Petition<sup>6</sup> nor demonstrate that waiver is in the public interest<sup>7</sup>.

**I. SE TEL's PETITION MUST BE DENIED BECAUSE IT LACKS BOTH FACTUAL AND POLICY BASIS**

The "special circumstances" SE TEL refers to is the "injustice created" by the Order because "from time to time it receives requests from customers for service in metropolitan locations."<sup>8</sup> SE TEL asserts that it serves very few customers in non-rural areas and that it has no present intention to serve urbanized areas in Kentucky.<sup>9</sup> SE TEL goes on to say that the rural exemption should be available to CLECs if 95% or more of its customers are located in rural areas; otherwise SE TEL and similarly situated CLECs, will have to make the difficult choice of whether to decline to provide service in urban areas or agree to provide service in metropolitan areas and become ineligible for the rural exemption as provided in the CLEC Access Charge Order.<sup>10</sup> ALLTEL submits that SE TEL's business dilemma does not warrant a special waiver of its rule, for it is not uncommon for companies to make strategic business decisions based on competing financial interests. In this case, the decision is simply an expanded market versus premium access rates.

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<sup>4</sup> Petition at 6.

<sup>5</sup> *CLEC Access Charge Order* at ¶75.

<sup>6</sup> Petition at 4.

<sup>7</sup> Petition at 5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Petition at 3.

SE TEL has not provided any factual information that would permit the Commission to determine if SE TEL's Petition is in the public interest. SE TEL states it has 12,000 business and residential access lines.<sup>11</sup> If 5% of SE TEL's customers are located in urban areas, SE TEL would serve 600 customers in Lexington and Louisville. Of course, under SE TEL's proposal of a 5% threshold, this number would continue to increase as its rural customer base increases. Depending on the types of customers served by SE TEL, even a few of these customers located in urban areas could generate significant traffic volumes.

SE TEL cannot satisfy the public interest standard merely by declaring that its present "intent" does not contemplate expanding its service area into urban territories such as Louisville and Lexington.<sup>12</sup> Neither ALLTEL nor the Commission have any way of knowing SE TEL's intent to limit its offerings to rural markets nor has SE TEL indicated whether any urban service offering would be based on UNE-P or resale. ALLTEL does know that SE TEL and ALLTEL recently completed an arbitration in the state of Kentucky where one of the key issues was whether SE TEL was impaired as to unbundled-switching and eligible to avail itself of the UNE-P platform.<sup>13</sup> Although subject to appeal, the existing status of the matter would permit SE TEL to enter the Lexington market and other markets with greater than 50,000 people, SE TEL has thus far not excluded these areas from its proposed service area that was the subject of the arbitration.

Furthermore, in the course of that proceeding, ALLTEL discovered that SE TEL has reserved a block of ten thousand telephone numbers<sup>14</sup> and owns a switch located in Lexington. It

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<sup>11</sup> Petition at 1.

<sup>12</sup> Id.

<sup>13</sup> *Petition of Southeast Telephone, Inc., for Arbitration of Certain Terms and Conditions of the Proposed Agreement with Kentucky ALLTEL, Inc., Pursuant to the Communications Act of 1934, as amended by the Telecommunications Act of 1996*, Case No. 2003-00115, filed August 7, 2003.

<sup>14</sup> See Attachment A which includes a print out of the LERG showing SE TEL as the owner of the 859-416 block of numbers.

is unclear why SE TEL would include the Lexington areas and all other areas of 50,000 or greater population in its quest to obtain access to UNE-P, reserve ten thousand telephone numbers in Lexington and own a switch in Lexington if SE TEL had no intention of expanding its service to the Lexington market.

This Petition must also be denied because SE TEL has alternative grounds to plead that raise fewer public interest concerns were it to serve non-rural markets and maintain its rural status. For example, SE TEL could commit to serve any customers residing in non-rural areas via resale. As a reseller of local exchange service, SE TEL would not be entitled to access compensation and the Commission's concerns over access arbitrage would be reduced significantly. But SE TEL has not specified that path, and its current proposal clearly conflicts with that portion of the order that clearly states that "if any portion of a CLEC's access traffic originates from or terminates to end users located within either of these types of areas [non-rural], the carrier will be ineligible for the rural exemption to our benchmark rule."<sup>15</sup> Therefore, it is ALLTEL's position that SE TEL can only maintain its rural status, for purposes of determining the applicable access rate, if all of its access traffic originates from, or terminates to, end users located within rural areas. If SE TEL desires to maintain its status as a rural CLEC, it should commit to serve all of its customers located in non-rural areas through resale.

## **II. GRANTING OF THIS PETITION IMPOSES ADDITIONAL ADMINISTRATIVE BURDENS**

The main reason for the bright-line rule established by the Commission in the definition of the rural exemption was administrative ease. The existing rule is easy to monitor and SE TEL does not provide any guidance as to how the Commission should monitor SE TEL to ensure that it continues to serve a *de minimis* number of customers in non-rural markets. Despite SE TEL's

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<sup>15</sup> CLEC Access Charge Order at ¶76.

assertions that its business plan does not contemplate expanding into urban markets, those plans are always subject to change. Therefore SE TEL would have to submit reports to support the continuation of the waiver. This is precisely the type of oversight that the Commission sought to avoid when it established the bright-line rule for the rural exemption.

### **III. CONCLUSION**

The Commission has the discretion to waive its rules only when the requesting party, in this case SE TEL, shows that special circumstances make strict compliance inconsistent with the public interest<sup>16</sup>. SE TEL's broad statements regarding its disinterest in urban markets fails to satisfy the required showing and are, as a matter of fact, subject to question. Accordingly, ALLTEL opposes SE TEL's Petition and urges the Commission to deny the Petition.

Respectfully submitted,

Kentucky ALLTEL, Inc.

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<sup>16</sup> *Northeast Cellular Telephone Co., L.P. v. FCC*, 879 F.2d 1164, 1166 (D.C. Cir. 1990).

## CERTIFICATE OF SERVICE

I, Sharron Turner, hereby certify that a copy of the foregoing Opposition of ALLTEL, was served to the parties of record, via electronic mail (\*) or U.S. Mail on this 23rd day of April 2004.

/s/

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